

3.4. Cultural Resources

This section addresses potential cultural impacts that may result from construction and/or operation of the Belmont Village Encinitas-by-the-Sea Project. The following discussion addresses the existing conditions in the project area, identifies applicable regulations, identifies and analyzes environmental impacts, and recommends measures to reduce or avoid adverse impacts anticipated from implementation of the project, as applicable.

The analysis in this section is based on the *Phase I Cultural Resources Study* prepared by Brian F. Smith and Associates, Inc. (2018). The Phase I Cultural Report was peer reviewed by BRG Consulting, Inc. and is included as Appendix E-1.

Scoping Issues Addressed

During the scoping period for the Project, a scoping meeting was conducted and written comments were received from agencies and the public. The following issues related to cultural resources and Native American Tribal Consultations were raised by the Native American Heritage Commission and are addressed in this section:

- AB 52 applies to any project for which an NOP, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.
- NAHC recommends that lead agencies consult with California Native American Tribes that are traditionally and culturally affiliated with the geographic area of the Project.
- Both SB 18 and AB 52 have tribal consultation requirements.
- NAHC provided recommendations for Cultural Resource Assessments.

Because the Project does not include a General Plan Amendment, compliance with SB-18 is not applicable. Tribal consultations, pursuant to SB-18 are not required and are not addressed in this EIR.

3.4.1. Existing Conditions

The study area is located in western San Diego County, directly north of San Elijo Lagoon on the coastal plain. The coastal strip has a 130-kilometer-long shoreline and is comprised of raised Pleistocene marine and non-marine terraces ranging from five to 20 kilometers in width. Cretaceous, Tertiary, and Quaternary marine and non-marine sedimentary deposits define these terraces, which have been extensively modified by erosion. Drainages of varied catchment size are closely spaced along the coast, and lagoons have formed at the mouths of many of these rivers.

The area of western San Diego County has a very rich and extensive record of both prehistoric and historic activity. The cultures that have been identified in the general vicinity of the Project area include the Paleo Indian Period manifestation of the San Dieguito Complex, the Early Archaic

Period represented by the La Jolla Complex, and the Late Prehistoric Period represented by the Kumeyaay Indians. Following the Hispanic intrusion into the region, the Presidio of San Diego, the Mission San Diego de Alcalá, and the Pueblo of San Diego were established. The Project area was possibly used in conjunction with the agricultural activities of the mission until the period of mission secularization. The pastoral activities of the Mexican Period (1822 to 1846) likely included use of the areas near the project for grazing purposes. Farming also blossomed and gradually replaced cattle ranching in many of the coastal areas. The site is currently used for agriculture.

An archaeological records search was conducted at the South Coastal Information Center (SCIC) on August 21, 2018. The SCIC search identified that 58 cultural resource studies have been conducted within a one-mile radius of the Project site. Nine of the previous studies include parcels within the Project site. These sources did not indicate the presence of cultural resources within or immediately adjacent to the Project.

The SCIC search also identified 64 cultural resource locations within a one-mile radius of the Project site, four of which (P-37-025108, P-37-025109, P-37-025110, and P-37-025112), all prehistoric isolated marine shell fragments, have been recorded within the project boundaries. These resources are identified on Table 3.4-1. Of the 64 cultural resources found within a one-mile radius of the Project site, 58 are prehistoric resources. Of the prehistoric resources, 36 are recorded as either isolates or small sites consisting of lithic flakes, fire-affected rock, shell fragments, and/or Tizon Brown Ware fragments, while 22 are shell midden sites. The midden sites are mainly situated along the bluffs overlooking San Elijo Lagoon and Escondido Creek (west of the Project site). The prehistoric resources are mostly tied to extraction behavior and are likely associated with the prehistoric exploitation of Escondido Creek and San Elijo Lagoon. The remaining six (6) sites are historic, and include an old water line, an animal/pet grave marker, building foundations, and associated trash deposits.

Brian F. Smith and Associates, Inc. (BFSA) also requested a records search of the Sacred Lands File (SLF) of the Native American Heritage Commission (NAHC). The SLF search did not indicate the presence of any sacred sites or locations of religious or ceremonial importance within the search radius; however, the search did indicate that the general area is sensitive for cultural resources.

In accordance with the recommendations of the NAHC, BFSA contacted all Native Americans listed in the NAHC response letter. NAHC identified 25 tribes, 28 contact persons, and BFSA contacted those tribes and person listed in the NAHC and received a response from one tribe, the Agua Caliente tribe, which indicated that a records check of the Tribal Historic preservation office's cultural registry revealed that the Project is not located within the Agua Caliente Tribe's Traditional Use Area. Therefore, they stated they would defer to the other tribes in the area.

An intensive pedestrian survey of the Project site was conducted by BFSA on August 16, 2018. Aerial photographs and development maps permitted orientation and location of project boundaries. Where possible, narrow transect paths were employed to ensure maximum survey coverage. No

constraints were encountered during the survey and ground visibility was classified as excellent. The entire property had been recently plowed, which allowed for unobstructed ground visibility and all exposed ground was inspected for cultural materials. The soil on the property is generally free of rocks. A survey form, field notes, and photographs documented the survey work undertaken. Photographs were taken to document field conditions during the investigations. During the field survey, no evidence of an archaeological site was observed, and the survey did not identify any significant cultural resources.

TABLE 3.4-1. CULTURAL RESOURCE SURVEY RESULTS

Resource Number	Description	Status
P-37-025108	Prehistoric Isolated Marine Shell Fragment	Not an Archaeological Resource
P-37-025109	Prehistoric Isolated Marine Shell Fragment	Not an Archaeological Resource
P-37-025110	Prehistoric Isolated Marine Shell Fragment	Not an Archaeological Resource
P-37-025112	Prehistoric Isolated Marine Shell Fragment	Not an Archaeological Resource

Source: Brian F. Smith and Associates, Inc. 2018 (Appendix E)

3.4.2. Regulatory Framework

Cultural resources may be subject to plans and policies developed to ensure that adequate consideration is given to mitigating impacts to historical resources. The Project is subject to the following plans, regulations, goals, and policies.

State

California Environmental Quality Act

For the purposes of CEQA, a significant historical resource is one that qualifies for the California Register of Historical Places (CRHR) or is listed in a local historic register or deemed significant in an historical resources survey, as provided under Section 5025.1(g) of the Public Resources Code (PRC). A resource that is not listed in or is not determined to be eligible for listing in the CRHR, is not included in a local register or historic resources or is not deemed significant in a historical resources survey may nonetheless be deemed significant by a CEQA lead agency.

CEQA Section 21083.2(g) defines the criteria for determining the significance of archaeological resources. These criteria include definitions for a “unique” resource, based on its:

- Containing information needed to answer important scientific research questions and that there is a demonstrable public interest in that information;
- Having a special and particular quality such as being the oldest or best available example of its type; and/or
- Being directly associated with a scientifically recognized important prehistoric or historic event or person.

Assembly Bill 52 (AB52)

On September 25, 2014, Governor Brown signed Assembly Bill (AB) 52, which created the new category of “tribal cultural resources” that must be considered under CEQA. It applies to all projects that file a notice of preparation (NOP) or notice of negative declaration or mitigated negative declaration on or after July 1, 2015. AB 52 requires lead agencies to provide notice to and begin consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of a Project if that tribe has requested, in writing, to be kept informed of projects by the lead agency prior to the determination whether a negative declaration, mitigated negative declaration, or environmental impact report will be prepared. If a tribe requests consultation within 30 days upon receipt of the notice, the lead agency must consult with the tribe. The bill also specifies mitigation measures that may be considered to avoid or minimize impacts on tribal cultural resources.

California Health and Safety Code

California Health and Safety Code Section 7050.5 regulates the procedure in the event of the discovery of Native American human remains. Pursuant to PRC Section 5097.98, in the event of human remains discovery, no further disturbance is allowed until the county coroner has made the necessary findings regarding the origin and disposition of the remains. If the remains are determined to be Native American, the coroner is required to contact the Native American Heritage Commission. The commission is responsible for contacting the most likely Native American descendent, who will consult with the local agency regarding how to proceed with the remains. According to CEQA Guidelines Section 15064.5, Native American human remains are a significant resource.

California Register of Historical Resources

The State Historical Resources Commission has designated the California Register for use by state and local agencies, private groups, and citizens to identify, evaluate, register, and protect California’s historical resources. The California Register is the authoritative guide to the state’s significant historical and archaeological resources. The California Register program encourages public recognition and protection of resources of architectural, historical, archaeological, and cultural significance; identifies historical resources for state and local planning purposes; determines eligibility for state historic preservation grant funding; and affords certain protections under CEQA.

Local**City of Encinitas General Plan**

- GOAL 7: The City will make every effort to ensure significant scientific and cultural resources in the Planning Area are preserved for future generations.
- POLICY 7.1: Require that paleontological, historical and archaeological resources in the planning area are documented, preserved or salvaged if threatened by new development.
- POLICY 7.2: Conduct a survey to identify historic structures and archaeological/cultural sites throughout the community and ensure that every action is taken to ensure their preservation.

City of Encinitas Municipal Code

Section 30.34.050, Cultural/Natural Resources Overlay Zone, of the City's Municipal Code (Chapter 30.34, Special Purpose Overlay Zones) includes regulations that apply to areas within the Special Study Overlay Zone where site-specific analysis indicates the presence of sensitive cultural, historic, and biological resources, including sensitive habitats. For parcels containing archaeological or historical sites, the Municipal Code requires a site resource survey and impact analysis to determine the significance of, and possible mitigation for, sensitive resources.

3.4.3. Thresholds for Determination of Significance

This section lists the thresholds used to conclude whether a cultural resource impact would be significant.

Guidelines for Determination of Significance

A project would be considered to have a significant impact if it would:

- 1) Cause a substantial adverse change in the significance of a historical resource pursuant to § 15064.5.
- 2 Cause a substantial adverse change in the significance of an archaeological resource pursuant to State CEQA Guidelines § 15064.5.
- 3) Disturb any human remains, including those interred outside of formal cemeteries.

3.4.4. Analysis of Project Effects and Significance Determination

Impact 3.4-1: Cause a substantial adverse change in the significance of a historical resource pursuant to § 15064.5.

The Project site is used for agricultural purposes and has several outbuildings located near the southwest corner of the site. There are no resources on the Project site which are considered “historical resources” within the meaning of CEQA. Neither the Project site nor the existing structures are listed in, or determined to be eligible for listing in, state or local registers of historical resources. In addition, the City has not determined that the project site or existing structures are “historically significant” within the meaning of CEQA Guidelines section 15064.5(a)(3).

These structures are not a historical resource as defined in § 15064.5. There are no historic buildings, structures, rock outcroppings or other features on or in proximity to the site. Implementation of the project would not cause a substantial adverse change in the significance of a historical resource pursuant to § 15064.5 as none exist. No impact would occur due to project implementation.

Impact 3.4-2: Cause a substantial adverse change in the significance of an archaeological resource pursuant to State CEQA Guidelines § 15064.5.

An intensive pedestrian survey of the Project site was conducted by BFA on August 16, 2018. No evidence of an archaeological site was observed during the pedestrian survey and no significant cultural resources were identified. One isolate metate fragment was observed in the plowed field and due to the extensive agricultural use of the property, it's not clear where the object originated, and therefore, the artifact lacks scientific integrity and is not considered significant. However, based upon the identification of isolated artifacts within the Project site area, and the high cultural resource sensitivity surrounding San Elijo Lagoon a significant impact to archaeological resources could occur from the various construction disturbances associated with the proposed Project. Mitigation measures **MM CUL-1** through **MM CUL-8** and conformance with applicable state regulations would address the recovery of known archaeological historical resources and the potential for encountering undiscovered cultural and/or tribal cultural resources.

With implementation of the proposed mitigation measures, impacts would be less than significant.

Impact 3.4-3: Disturb any human remains, including those interred outside of formal cemeteries.

The potential for encountering human remains at the Project site is low. No known burial sites have been identified on the site or in the vicinity. With implementation of mitigation measures **MM CUL-1** through **MM CUL-8**, impacts would be less than significant.

3.4.5. Mitigation Measures

The following mitigation measures would reduce cultural resource impacts to below a level of significance:

MM CUL-1: Cultural Resources Construction Monitoring

Due to the high potential for uncovering unknown subsurface archaeological resources, including Native American tribal cultural resources, cultural resource mitigation monitoring shall be undertaken for any and all on-site and off-site ground disturbing activities. If on-site and/or off-site ground disturbing activities (e.g., exploratory trenching or excavations) are required for any informal or formal solicitation (written or spoken) of construction bids or similar requirements, all applicable requirements identified in MM CUL-2 through MM CUL-8 below shall be undertaken by the Applicant and/or Owner.

MM CUL-2: Cultural Resource Monitoring Program

A Cultural Resource Mitigation Monitoring Program shall be conducted to provide for the identification, evaluation, treatment, and protection of any cultural resources that are affected by or may be discovered during the construction of the proposed project. The monitoring shall consist of the full-time presence of a Qualified Archaeologist and a TCA (traditionally and culturally affiliated) Native American Monitor for, but not limited to, any clearing or grubbing of vegetation, tree removal, demolition and/or removal of remnant foundations, pavements, abandonment and/or installation of infrastructure; grading or any other ground disturbing or altering activities, including the placement of imported fill materials (note: all fill materials shall be absent of any and all cultural resources); and related road improvements, including, but not limited to, Manchester Avenue and Via Poco. Other tasks of the monitoring program shall include the following:

- The requirement for cultural resource mitigation monitoring shall be noted on all applicable construction documents, including demolition plans, grading plans, etc.
- The Qualified Archaeologist and TCA Native American Monitor shall attend all applicable pre-construction meetings with the Contractor and/or associated Subcontractors.
- The Qualified Archaeologist shall maintain ongoing collaborative consultation with the TCA Native American Monitor during all ground disturbing or altering activities, as identified above.

- The Qualified Archaeologist and/or TCA Native American Monitor may halt ground disturbing activities if archaeological artifact deposits or cultural features are discovered. In general, ground disturbing activities shall be directed away from these deposits for a short time to allow a determination of potential significance, the subject of which shall be determined by the Qualified Archaeologist and the TCA Native American Monitor, in consultation with the San Luis Rey Band of Mission Indians (“San Luis Rey Band”). Ground disturbing activities shall not resume until the Qualified Archaeologist, in consultation with the TCA Native American Monitor, deems the cultural resource or feature has been appropriately documented and/or protected. At the Qualified Archaeologist’s discretion, the location of ground disturbing activities may be relocated elsewhere on the project site to avoid further disturbance of cultural resources.
- The avoidance and protection of discovered unknown and significant cultural resources and/or unique archaeological resources is the preferable mitigation for the proposed project. If avoidance is not feasible a Data Recovery Plan may be authorized by the City as the Lead Agency under CEQA. If a data recovery is required, then the San Luis Rey Band shall be notified and consulted in drafting and finalizing any such recovery plan.
- The Qualified Archaeologist and/or TCA Native American Monitor may also halt ground disturbing activities around known archaeological artifact deposits or cultural features if, in their respective opinions, there is the possibility that they could be damaged or destroyed.

MM CUL-3 Pre-Excavation Agreement

Prior to the issuance of a Grading Permit, and subject to approval of terms by the City, the Applicant or Owner, and/or Contractor shall enter into a Pre-Excavation Agreement with the San Luis Rey Band, or other TCA tribe. The purpose of this agreement shall be to formalize protocols and procedures between the Applicant or Owner, and/or Contractor, and the San Luis Rey Band for the protection and treatment of, but not limited to, such items as Native American human remains, funerary objects, cultural and religious landscapes, ceremonial items, traditional gathering areas and cultural items, located and/or discovered through the cultural resource mitigation monitoring program in conjunction with the construction of the proposed project, including additional archaeological surveys and/or studies, excavations, geotechnical investigations, soil surveys, grading, or any other ground disturbing activities.

MM CUL-4 Retain Qualified Archaeologist and TCA Native American Monitor

Prior to the issuance of a Grading Permit, the Applicant or Owner, and/or Contractor shall provide a written and signed letter to the City's Development Services Director, stating that a City-approved Qualified Archaeologist and a TCA Native American Monitor have been retained at the Applicant or Owner and/or Contractor's expense to implement the monitoring program, as described in the pre-excavation agreement. A copy of the letter shall be included in the Grading Plan Submittals for the Grading Permit.

MM CUL-5 Prepare Controlled Grade Procedure

Prior to the issuance of a Grading Permit, and in order for potentially significant archaeological artifact deposits and/or cultural resources to be readily detected during mitigation monitoring, a written "Controlled Grade Procedure" shall be prepared by a Qualified Archaeologist, in consultation with the TCA Native American Monitor, the San Luis Rey Band, and the Applicant or Owner, subject to the approval of City representatives. The Controlled Grade Procedure shall establish requirements for any ground disturbing work with machinery occurring in and around areas the Qualified Archaeologist and TCA Native American Monitor determine to be sensitive through the cultural resource mitigation monitoring process. The Controlled Grade Procedure shall include, but not be limited to, appropriate operating pace, increments of removal, weight and other characteristics of the earth disturbing equipment. A copy of the Procedure shall be included in the Grading Plan Submittals for the Grading Permit.

MM CUL-6 Prepare Monitoring Report and/or Evaluation Report

Prior to the release of the Grading Bond, a Monitoring Report and/or Evaluation Report, which describes the results, analysis and conclusions of the cultural resource mitigation monitoring efforts (such as, but not limited to, the Research Design and Data Recovery Program) shall be submitted by the Qualified Archaeologist, along with the TCA Native American Monitor's notes and comments, to the City's Development Services Director for approval.

MM CUL-7 Disposition of Tribal Cultural Resources

The landowner shall relinquish ownership of all tribal cultural resources collected during the cultural resource mitigation monitoring conducted during all ground disturbing activities, and from any previous archaeological studies or excavations on the Project site to the San Luis Rey Band for respectful and dignified treatment and disposition, including reburial, in accordance with the Tribe's cultural and spiritual traditions. All cultural materials that are associated with burial and/or funerary goods

will be repatriated to the Most Likely Descendant as determined by the Native American Heritage Commission per California Public Resources Code Section 5097.98.

MM CUL-8 Identification of Human Remains

As specified by California Health and Safety Code Section 7050.5, if human remains are found on the Project site during construction or during archaeological work, the person responsible for the excavation, or his or her authorized representative, shall immediately notify the San Diego County Coroner's office by telephone. No further excavation or disturbance of the discovery or any nearby area reasonably suspected to overlie adjacent remains (as determined by the Qualified Archaeologist and/or the TCA Native American Monitor) shall occur until the Coroner has made the necessary findings as to origin and disposition pursuant to Public Resources Code 5097.98. If such a discovery occurs, a temporary construction exclusion zone shall be established surrounding the area of the discovery so that the area would be protected (as determined by the Qualified Archaeologist and/or the TCA Native American Monitor), and consultation and treatment could occur as prescribed by law. As further defined by State law, the Coroner would determine within two working days of being notified if the remains are subject to his or her authority. If the Coroner recognizes the remains to be Native American, he or she shall contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC would make a determination as to the Most Likely Descendent. If Native American remains are discovered, the remains shall be kept *in situ* ("in place"), or in a secure location in close proximity to where they were found, and the analysis of the remains shall only occur on-site in the presence of the TCA Native American Monitor.

Timing/Implementation: Prior to grading permit issuance, during grading and excavation activities, and upon completion of monitoring activities.

Enforcement/Monitoring: City of Encinitas Development Services

Level of Significance After Mitigation

Implementation of mitigation measures MM CUL-1 through MM CUL-8 would reduce impacts to below a level of significance.

3.4.6. Cumulative Impact Analysis

Other development projects in the region as shown in Table 2-5, Potential Cumulative Projects would also involve ground disturbances and thus could disturb surface or buried archaeological

resources. Without proper mitigation, the cumulative effects of these types of development projects on cultural resources could be significant.

Although no historical resources that meet the criteria for listing on the California Register of Historic Resources were identified within the boundaries of the Project site, it is possible that subsurface resources are present that have not yet been identified. Although unlikely, Project-related ground-disturbing activities could uncover previously unknown prehistoric or historic, as resources within Project boundaries. Therefore, the proposed Project has the potential to incrementally contribute to the disturbance of previously unknown cultural resources.

The proposed Project will be required to implement mitigation measures MM CUL-1 through MM CUL-8 to reduce potential impacts to archaeological, and historical resources to below a level of significance. Existing, approved, proposed, and other reasonably foreseeable projects with potentially significant impacts to archaeological and historical resources would be required to comply with federal, state, and local regulations and ordinances protecting cultural resources through implementation of similar mitigation measures. Therefore, with implementation of regulatory requirements and standard conditions of approval, and Mitigation Measures MM CUL-1 through MM CUL-8, the proposed Project's contribution to impacts to cultural resources would not be cumulatively considerable.

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